



Agenda Date: 10/22/03
Agenda Item: 2D

STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

www.bpu.state.nj.us

IN THE MATTER OF THE APPLICATION OF)
JERSEY CENTRAL POWER & LIGHT COMPANY)
FOR THE APPROVAL OF AN AMENDMENT AND)
RESTATEMENT OF THE POWER PURCHASE)
AGREEMENT CURRENTLY EXISTING)
BETWEEN IT AND NORTH JERSEY ENERGY)
ASSOCIATES, A LIMITED PARTNERSHIP)

ENERGY

ORDER OF APPROVAL

DOCKET NO. EM03060438

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated June 24, 2003, Jersey Central Power & Light Company ("JCP&L" or "Company") filed a petition with the Board of Public Utilities ("Board") to approve an Amended and Restated Power Purchase Agreement ("Amended PPA"), dated May 16, 2003, between JCP&L and North Jersey Energy Associates ("NJEA"). JCP&L requested expedited treatment of this matter, as well as confidential treatment of certain information contained in the petition. A copy of the petition was served upon the Division of the Ratepayer Advocate ("Advocate").

Background

NJEA is a limited partnership. Until January 1998, NJEA's sole general partner was Intercontinental Energy Corporation. In January 1998, Northeast Energy, LP and its wholly owned subsidiary, Northeast Energy, LLC, acquired all of the interests in NJEA. Northeast Energy, LP holds a 98% limited partner interest and a 1% general partner interest in NJEA, and Northeast Energy, LLC holds a 1% limited partner interest in NJEA. FPL Energy, Inc. and Tractabel Power, Inc. each indirectly holds a 50% interest in Northeast Energy, LP.

NJEA owns and operates the natural gas-fired, combined-cycle, cogeneration facility located in Sayreville, New Jersey ("Facility") as a "qualifying facility" ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). The Facility is nominally rated at approximately 300 megawatts ("MW") of capacity. On October 22, 1987, JCP&L and NJEA entered into a Power Purchase Agreement between Jersey Central Power & Light Company and North Jersey Energy Associates ("Original PPA"), pursuant to which NJEA agreed to sell to JCP&L, and JCP&L agreed to purchase from NJEA, 100% of the net electrical output produced by the Facility which, at that time, had an estimated capacity rating of 300 MW. The Original PPA had a 20-year term that began on the date of first commercial operation of the Facility.

The Original PPA was entered into in recognition of JCP&L's obligations under PURPA, as implemented by the Federal Energy Regulatory Commission and the Board. The Board approved the Original PPA by Order dated February 8, 1988, in Docket No. EM87101288. On June 16, 1989, JCP&L and NJEA entered into an amendment ("First Amendment") to the

Original PPA to amend the initial date of the Original PPA. The Board approved the First Amendment by Order dated June 29, 1989, in Docket No. EM87101288. JCP&L and NJEA subsequently entered into three letter amendments to correct certain operational matters on November 22, 1996, March 17, 1998 and March 11, 1999, respectively. The Original PPA, as amended, is hereinafter referred to as the "Existing PPA."

Existing PPA

Under the Existing PPA, NJEA agreed to sell to JCP&L, and JCP&L agreed to purchase, not less than 250 MW of contract capacity and the net electrical output of the Facility, up to 2,200,000 megawatt hours ("MWh") per year for the term of the agreement. The Existing PPA has a term that began on the date of first commercial operation of the Sayreville Facility, which was August 14, 1991, and ends on August 13, 2011. The energy charge is based on a formula comprised of three components: a fixed cents/kilowatt-hour ("kWh") component; a variable energy component ("Variable Energy Rate") that fluctuates with the price of natural gas and changes yearly on a lagged basis; and a fixed on-peak, on-season cents/kWh capacity payment.

JCP&L asserted the prices that it pays under the Existing PPA are significantly above today's market prices for power, resulting in stranded costs for the Company that are recoverable from its customers, pursuant to the Board's Final Order, dated March 7, 2001, in Docket Nos. EO97070458, EO97070459 and EO97070460 ("Final Order"). JCP&L asserted that the stranded costs under the Existing PPA are currently estimated at \$617 million, on a net present value ("NPV") basis, from December 1, 2003 through the remaining term of the Existing PPA, using a discount rate of 8.46%.¹

JCP&L also asserted that events have occurred which necessitated a change in the natural gas price index used to calculate the Variable Energy Rate, under the Existing PPA, whether or not the Existing PPA was to be restructured. Under the Existing PPA, the Variable Energy Rate was based on a U.S. government gas index, which is no longer published. According to the petition, the parties needed to agree on a replacement index upon which to base the Variable Energy Rate. The parties have agreed to adopt, for purposes of the Variable Energy Rate under the Existing PPA, and, as described below, for the variable component of the pricing under the Amended PPA, a published, widely-used replacement gas index reflective of the cost of gas in New Jersey. The Company stated that this widely used replacement gas index will be used under the Amended PPA to index the variable component of the energy price to gas prices on a current monthly basis.

Amended PPA

Under the Amended PPA, JCP&L will receive the greater of 250 MW of capacity or the actual capacity of the Facility, thereby establishing a minimum level of capacity credit, regardless of the Facility's actual capacity rating.

JCP&L asserted that, under the Amended PPA, JCP&L customers would realize savings through a reduction from the energy price under the Existing PPA. Specifically, JCP&L asserted

¹ The discount rate was JCP&L's weighted average after-tax cost of capital at the time the petition was filed. The current discount rate is 6.75%, based on the Board's approval of an overall cost of capital of 8.38% in JCP&L's recently concluded base rate proceeding, in Docket No. ER02080506.

that the Amended PPA provides for substantially the same energy delivery requirements as the Existing PPA and provides for energy price discounts from a “base” price that was structured to equal the expected prices under the Existing PPA for all hours of operation. The Company also asserted that the Amended PPA allows for the possibility of certain prepayments of such discounts by NJEA under certain conditions.

JCP&L asserted that the Amended PPA assures the continued availability of reliable energy and capacity to JCP&L. Over the term of the Amended PPA, NJEA would make available to JCP&L energy and capacity from a portfolio of resources, which may include the Facility. In general, NJEA does not have delivery flexibility under the restructured arrangement. Although NJEA may provide capacity and energy from sources other than the Facility, NJEA is required to maintain its status as a PJM market seller, maintain a net capability of the Facility at no less than 250 MW per day, and keep the Facility available for PJM reliability purposes.

JCP&L asserted that the delivery schedules in the Amended PPA are based upon historical deliveries that have occurred under the Existing PPA and on levels that would be expected to continue absent the Amended PPA. These schedules include a fixed hourly delivery obligation in eight on-season months (December-March and June-September) and a fixed hourly delivery obligation in four off-season months (April-May and October-November) through the term of the Amended PPA. The contracted-for monthly energy deliveries in the Amended PPA are as shown in Schedule C to the Amended PPA.

Under the Amended PPA, NJEA would arrange for no less than 250 MW of capacity credits per day to be made available to JCP&L from any PJM Capacity Resource(s) (as defined in the PJM Reliability Assurance Agreement). JCP&L asserted that this provision essentially equals the amount of capacity currently made available to JCP&L from the Facility and that the provision of capacity credits under the Amended PPA that meet PJM eligibility requirements would ensure that JCP&L would continue to have such capacity available for use in meeting its capacity obligations in the PJM region. Under the Amended PPA, NJEA would deliver the energy to JCP&L at the JCP&L transmission zone, unless otherwise agreed. While the Amended PPA allows for NJEA to deliver at any delivery point in the JCP&L zone, NJEA is responsible for payment of a delivery point adjustment if delivery is made other than at the Facility bus, so that deliveries are priced, insofar as practicable, as if they were delivered at the Facility bus.

Any failure by NJEA to deliver the capacity and associated electricity under the Amended PPA is addressed through liquidated damage provisions, which would fully compensate JCP&L for any damages caused by NJEA's failure to meet its contractual delivery guarantees, except in cases of Facility outages, as discussed below.

JCP&L asserted that the “base” pricing under the Amended PPA has been structured to match the projected pricing under the Existing PPA with the following discounts: JCP&L would receive a monthly discount off this “base” price, subject to an annual reconciliation, such that the discount off “base” rates for each year would be equal to the greater of: (i) a fixed price per MWh for all hours, or (ii) a larger fixed price per MWh for all hours that energy is delivered from the market rather than from the Facility.

As discussed more fully below, the Amended PPA also incorporates the provisions of a Variable Energy Settlement.

Variable Energy Settlement

JCP&L asserted that the Variable Energy Settlement, dated February 28, 2003, resolves an issue involving the calculation of the Variable Energy Rate under the Existing PPA for the period from August 14, 2002 through the end, or termination, of the Existing PPA and, prospectively, under the Amended PPA by, among other things, substituting the average of the first-of-month gas prices for Texas Eastern, Zone 3 and TransCo Zone 6 Non-New York as reported in the Gas Daily Price Guide ("First-of-Month"), for the annual regional gas index prices formerly published in the DOE/EIA publication, "Cost and Quality of Fuel for Electric Utility Plants." JCP&L asserted that the First-of-Month index is designed to closely resemble gas purchases in New Jersey.

The Variable Energy Settlement represents a change from the Existing PPA, under which the Variable Energy Rate is indexed to gas prices on a lagged annual basis. JCP&L asserted that a current monthly index approach more accurately links fuel costs to contract costs, and allows for a more efficient hedging strategy by NJEA, thus reducing its hedging costs and contributing to the creation of a pool of savings from which restructuring savings are derived. The Company further maintained that, in order to implement the change to current monthly indexing, the parties have agreed to use a "contract adjuster" mechanism. The contract adjusters, which are set at closing, are monthly components of the Amended PPA pricing that set each projected Amended PPA payment so that they are exactly equal at closing to each projected Existing PPA payment. The monthly contract adjusters incorporate the following payment components that are present in the Existing PPA: (i) levelized base rate, (ii) capacity payment during on-peak, on-season periods, and (iii) any difference resulting from shifting from the lagged annual indexing to current monthly indexing. The monthly contract adjuster in each month is calculated by subtracting the projected First-of-Month gas price for such future month multiplied by the implicit heat rate in the Amended PPA from the total amount JCP&L is expected to pay in such future month under the Existing PPA. The contract adjusters are based upon New York Mercantile Exchange, Inc. ("NYMEX") natural gas futures prices at the time of closing, plus a transportation adder. To the extent that actual gas prices deviate from the projected NYMEX-based gas prices, the total amount of restructuring savings will increase or decrease from the "base" price discussed above.

JCP&L asserted that the Amended PPA converts gas price indexing from a lagged annual mechanism under the Existing PPA to a current monthly mechanism. Under the Existing PPA, each August, the Variable Energy Rate is calculated by multiplying the existing Variable Energy Rate by the ratio of the gas index price from the previous calendar year over the gas index price from the calendar year two years prior. Under the Amended PPA, upon the effective date and each month thereafter, the variable component of the energy price will be calculated by multiplying the then current First-of-Month gas price by the implicit heat rate in the contract.

Prepayment Credit

The Amended PPA permits NJEA, at its sole option, to monetize the projected customer benefits of the Amended PPA in the form of a NPV Prepayment Credit, payable in whole or in part (and from time to time), to JCP&L within three years after the Effective Date of the Amended PPA. If pre-paid at closing, the Prepayment Credit would be at a NPV based on the 8.46% discount rate. If paid after closing, the NPV Prepayment Credit would be based on JCP&L's then current Board-approved weighted average after-tax cost of capital. To the extent

a Prepayment Credit payment is received, JCP&L shall immediately credit such prepayment amount to its MTC Deferred Balance (as such term is defined in the Final Order).

During the course of this proceeding, NJEA committed to making a Prepayment Credit payment of approximately \$26.5 million to JCP&L on the effective date of the Amended PPA. That commitment was memorialized in a letter agreement between JCP&L and NJEA dated October 21, 2003, wherein NJEA assumed the effective date of the Amended PPA to be December 1, 2003, as originally contemplated in the petition. The Prepayment Credit payment was negotiated based upon an anticipated minimum customer benefit in excess of \$50 million, calculated on a NPV basis at the 8.46% discount rate.

Recovery of Restructuring-Related Costs

JCP&L asserted that the Amended PPA would result in a substantial reduction in JCP&L's stranded costs, which reduction would be passed through to JCP&L's customers through payments to the Company's MTC Deferred Balance authorized by the Board in its Final Order. JCP&L requested a determination that the Amended PPA would result in a substantial reduction in the total stranded costs of the Company, which resulting savings would be passed through to customers on a full and timely basis, pursuant to N.J.S.A. 48:3-61(l)(1). JCP&L further sought a finding by the Board that, pursuant to N.J.S.A. 48:3-61(l)(3)(a), all costs and charges to be paid by JCP&L for capacity and energy, pursuant to the Amended PPA, would qualify for full and timely recovery by JCP&L, and that any such costs which are above market would be recovered through the MTC in JCP&L's tariff as "stranded costs" pursuant to N.J.S.A. 48:3-61(a)(3) and N.J.S.A. 48:3-61(l)(3)(a). JCP&L also sought a finding that the Company would be able to fully and timely recover from its customers all costs and expenses associated with the restructuring of the Existing PPA and the entering into of the Amended PPA. In addition, JCP&L asserted that the Board's approval of the Amended PPA should not be subject to modification except as jointly requested by JCP&L and NJEA, pursuant to N.J.S.A. 48:3-61(l)(4).

Requests for Confidential Treatment

On July 2, 2003, Board Staff and the Advocate executed an Agreement of Non-Disclosure of Information Claimed to be Confidential ("Confidentiality Agreement"). Pursuant to the terms of the Confidentiality Agreement, information asserted to be confidential in the petition has been provided to Board Staff and the Advocate, as have certain responses to discovery requests.

JCP&L asserted that all references to the pricing provisions or values under the Amended PPA are confidential in nature inasmuch as they contain pricing, delivery and other information that is proprietary to JCP&L and NJEA. JCP&L asserted that these pricing provisions or values include the discount rates and aggregate amounts of savings derived therefrom, as set forth in Paragraphs 7, 15, 19, 24, 28 [including footnote 8], 31, 42 and 46 of the petition, and in certain definitions under Section 1, as well as certain data set forth in Section 3.8(f), of the Amended PPA. JCP&L also asserted that, included in the category of confidential information for the same reasons are: Sections 4.5(a) and (b) of the Amended PPA, and certain data from Part II of Schedule A, Part I, Section 1 of Schedule B, Exhibit A to Schedule D-1, Examples 1 and 2 of Schedule E and the entirety of Schedule F thereof. Accordingly, JCP&L requested that such information be kept confidential and not be disclosed to anyone other than the Board, Board Staff, and the Advocate, for a period of not fewer than two (2) years from June 24, 2003, the filing date of the petition.

JCP&L submitted an affidavit of Kevin M. Siedt, Staff Business Analyst – Rates Strategy in the Rates and Regulatory Affairs Department with FirstEnergy Service Company, which provides rates-related support services to and for JCP&L, in support of the Company's request for confidential treatment. Mr. Siedt asserted that the Amended PPA contains information that, if publicly disclosed, would provide a disadvantage to JCP&L when the Company attempts to renegotiate other non-utility generator ("NUG") contracts in the future. He asserted that disclosure of commercially sensitive pricing, delivery, financial, forecast and other proprietary information could lead to higher prices than might otherwise be achieved with respect to subsequent renegotiated NUG contracts. Mr. Siedt further asserted that the Amended PPA contains a confidentiality provision under which JCP&L and NJEA agreed, among other things, and with certain limitations, not to disclose and to keep confidential (1) the terms and provisions of the Amended PPA and any other agreements relating to the NUG contract restructuring; and (2) any financial, pricing or supply quantity information thereunder.

By letter dated June 27, 2003, JCP&L supplemented its petition by providing a separate affidavit of Nathan E. Hanson, Business Manager with NJEA, wherein Mr. Hanson made similar assertions to JCP&L in support of the request for confidential treatment of the information identified in the petition. Mr. Hanson asserted that the identified information contains commercially sensitive pricing, delivery, financial, forecast and other information that is proprietary to NJEA in connection with NJEA's ownership and operation of the Facility and its negotiations with JCP&L concerning the restructuring of the Existing PPA and the entering into of the Amended PPA. Mr. Hanson further asserted that, if such information were publicly disclosed, NJEA would be at a disadvantage with respect to other negotiations it may already be engaged in or in which it may become engaged.

By letter dated September 29, 2003, JCP&L submitted certain redacted and unredacted confidential discovery request responses, as more fully described below, and sought to supplement the aforementioned June 24, 2003 and the June 27, 2003 letters with respect to the confidential information that has been thus far utilized in this proceeding. JCP&L requested that the Board permanently treat the redacted portions of the petition and discovery requests, including JCP&L's confidential responses to specific Advocate discovery requests, as confidential. Specifically, the Company requested confidential treatment of the unredacted confidential copies of the Company's anticipatory discovery request responses designated 5, 6, 7, 9, 11, 12, 14, 16, 17, 18, 19, 21, 23, 24, 25 and 26 and its discovery request responses designated as RAR-8, 9, 14, 20, 25, 26, 31, 32 and 33 Supplemental. JCP&L asserted that the above discovery responses were not submitted for official filing with the Board, nor was the information conveyed with the intent that such information would become government records within the meaning of the Open Public Records Act ("OPRA") pursuant to N.J.A.C. 14:1-12.1 et seq.

Request for Expedited Treatment

JCP&L requested the Board's expeditious review of the petition. JCP&L asserted that the Amended PPA is an integral part of JCP&L's efforts to reduce stranded costs, as required by N.J.S.A. 48:3-49 et seq. JCP&L further asserted that NJEA's willingness to agree to the terms of the Amended PPA was predicated on, among other things, the Board's expected approval of the Petition no later than October 1, 2003. To the extent that closing on the Amended PPA is completed prior to December 1, 2003, the Amended PPA provides for further savings to accrue to the benefit of customers.

PSE&G's Motion to Intervene

By letter dated July 8, 2003, Public Service Electric and Gas Company ("PSE&G") filed a motion to intervene in this matter. PSE&G provides gas sales and transportation services to the Facility under the terms of a Board-approved Gas Purchase and Sales Agreement ("Gas Supply Agreement"). PSE&G asserted that the Gas Supply Agreement was designed to support the Facility's operation on a baseload basis, and that revenues received under the Gas Supply Agreement are credited to its Levelized Gas Adjustment Clause, to the benefit of firm customers. PSE&G asserted that the Board's approval of the proposed Amended PPA would permit NJEA to meet its power supply obligations to JCP&L without operating the Facility unless it is economically viable to do so. PSE&G asserted that approval of the Amended PPA would likely result in significantly reduced gas revenues, to the detriment of PSE&G's firm customers under the existing Gas Agreement. PSE&G stated that, in an effort to accommodate the interests of both JCP&L and NJEA in restructuring the Existing PPA, PSE&G entered into discussions with NJEA regarding the possible amendment of the existing Gas Supply Agreement to address the prospective operation of the Facility under the Amended PPA. PSE&G further stated that, while these discussions had been constructive and PSE&G anticipated a successful resolution of the remaining issues, a final agreement had not been reached. PSE&G asserted that, throughout these discussions, it emphasized to NJEA the importance of having the Board consider both the electric impact to JCP&L's customers as well as the impact to PSE&G's firm gas customers at the same time. PSE&G asserted that consideration of JCP&L's petition by the Board prior to the Board's examination of the potential impact of the petition on PSE&G's firm customers would be premature. PSE&G therefore asserted that approval of the Amended PPA would specifically and directly affect it and its firm gas customers, that no other party to this proceeding can present its interest herein, and that its inclusion as a party in this matter would not unduly delay or confuse this proceeding. No party opposed PSE&G's motion.

Termination Agreement

During the review of this matter, it became known that a potential contractual dispute existed between NJEA and Hercules Incorporated ("Hercules"), the steam host through which NJEA was able to obtain QF status under PURPA. Hercules owns a chemical manufacturing facility ("Hercules Facility") located in Parlin, New Jersey, that utilizes a portion of the steam generated by the Facility through an Industrial Steam Sales Contract ("Steam Contract") between itself and NJEA. Hercules, in turn, resells a portion of the steam it purchases from NJEA to its lessee, Green Tree Technologies Inc. ("Green Tree"), a company that owns a facility ("Green Tree Facility"), also located in Parlin, New Jersey, engaged in the production of nitrocellulose and other chemicals. The potential contractual dispute concerned the potential cessation of the production of steam for use by Hercules and Green Tree in their respective manufacturing operations, thereby creating the potential for the reduction and/or elimination of said manufacturing operations and the related reduction and/or elimination of employment levels related to said manufacturing operations.

NJEA and Hercules subsequently entered into a Termination Agreement, dated October 21, 2003, whereby NJEA and Hercules agreed to terminate the Steam Contract as of the effective date of the Amended PPA between JCP&L and NJEA, subject to certain considerations. In return for the mutual agreement to eliminate the Steam Contract, NJEA agreed to make certain "Monthly Employment Incentive Payments" to assist Hercules and Green Tree in the

continuation of their respective manufacturing operations, subject to certain employment conditions.

Hercules' Motion to Intervene

By letter dated October 16, 2003, Hercules filed a motion to intervene in this matter. Hercules asserted that, prior to filing the motion, it had been actively involved in discussions with JCP&L and NJEA concerning the proposed modification of the Amended PPA as it affects the Steam Contract between Hercules and NJEA, whereby NJEA furnishes steam from its Facility to the Hercules Facility. Hercules provided a copy of its Utilities Agreement between itself and Green Tree in response to a discovery request under the provisions of the Confidentiality Agreement. Hercules submitted an affidavit of John Televantos, Vice President, in support of Hercules' request for confidential treatment. Mr. Televantos asserted that the Termination Agreement, the Stipulation described below, the response to discovery request RAR-36, the Steam Contract and the Utilities Agreement contain commercially sensitive information that is proprietary to Hercules which, if publicly disclosed, could place Hercules at a disadvantage with respect to business operations and future sales.

First Amendment to Amended and Restated Power Purchase Agreement ("First Amendment")

In conjunction with the Termination Agreement, JCP&L and NJEA entered into the First Amendment, dated October 21, 2003, whereby JCP&L and NJEA agreed to amend the Amended PPA for the express purpose of NJEA making certain contributions to the Monthly Employment Incentive Payments set forth in the Termination Agreement. The First Amendment results in a temporary reduction in certain credits by NJEA to JCP&L under the Amended PPA, for a period not to exceed 48 months, thereby reducing the overall anticipated benefits arising from the Amended PPA.

Stipulation of Settlement ("Stipulation")

On October 21, 2003, JCP&L, Hercules and Board Staff (collectively, "Parties") entered into a Stipulation that, if approved by the Board, would result in the termination of the Existing PPA and the implementation of the Amended PPA, as amended by the First Amendment. The Advocate did not sign the Stipulation. A copy of the Stipulation is attached to this Order.

The Parties to the Stipulation have agreed that:

1. The First Amendment, attached to the Stipulation as Exhibit A, among other things, provides for certain offsetting adjustments to JCP&L's payment obligations under the Amended PPA which will provide NJEA with a source of funds with which to make a portion of the Monthly Employment Incentive Payments to Hercules, which is expected to enable Hercules and Green Tree to continue operations at the Hercules Facility and the Green Tree Facility, respectively.
2. The Termination Agreement, attached to the Stipulation as Exhibit B, provides for NJEA to pay Hercules a Monthly Employment Incentive Payment for each month during the period beginning on or after December 1, 2003, as pro-rated for a partial month if the termination date thereunder occurs on any date other than the last day of a month, and ending on the earlier of December 31, 2007 or the date before December 31, 2007 on which NJEA is no longer obligated to pay to Hercules the

Monthly Employment Incentive Payment, which will be partially funded by the offsetting adjustments to JCP&L's payment obligations under the Amended PPA as modified by in the First Amendment.

3. The offsetting adjustments to JCP&L's payment obligations under the Amended PPA pursuant to the First Amendment, and the Monthly Employment Incentive Payments to Hercules under the Termination Agreement, will be reduced and/or terminated in the event that there are (i) specified reductions in employment levels at the Hercules Facility and/or the Green Tree Facility, subject to reinstatement under certain conditions, or (ii) a cessation of all or substantially all of the manufacturing and production operations at either the Hercules Facility or the Green Tree Facility. Under the Termination Agreement, Hercules will provide NJEA monthly certifications with respect to: (i) employment levels at the Hercules Facility and the Green Tree Facility, and (ii) the occurrence or non-occurrence of a cessation of all or substantially all of the manufacturing and production operations at either the Hercules Facility or the Green Tree Facility.

Advocate Comments

By letter dated October 22, 2003, the Advocate submitted its comments in this matter. The Advocate stated that, upon review of the documents in this matter, it did not object to the approval of the Amended PPA, as amended by the First Amendment.

Discussion and Findings

As a preliminary matter, the Board has reviewed the motions of PSE&G and Hercules to intervene in this proceeding. The Board FINDS that PSE&G has demonstrated that it will be directly, substantially and materially affected by the outcome of this proceeding. Accordingly, the Board HEREBY GRANTS PSE&G's motion to intervene in this proceeding.

Hercules' motion is prompted by virtue of its interest in the proposed modification of the Amended PPA as it affects the Steam Contract between Hercules and NJEA. Upon review, the Board FINDS that Hercules has demonstrated that it will be directly, substantially and materially affected by the outcome of this proceeding. The Board HEREBY GRANTS Hercules' motion to intervene in this proceeding.

The Termination Agreement between NJEA and Hercules is not subject to the jurisdiction of this Board, as it concerns the termination of the existing Steam Contract between NJEA and Hercules and a commitment by NJEA to make certain Monthly Employment Incentive Payments to assist Hercules and Green Tree in the continuation of their respective manufacturing operations, subject to certain employment conditions. However, the terms of the Termination Agreement could not have been achieved without JCP&L and NJEA entering into the First Amendment to the proposed Amended PPA, whereby JCP&L and NJEA agreed to amend the Amended PPA for the express purpose of modifying JCP&L's payment obligations, under the Amended PPA, to enable NJEA to make certain contributions to the Monthly Employment Incentive Payments set forth in the Termination Agreement. The changes to JCP&L's payment obligations result in a temporary reduction in certain credits by NJEA under the Amended PPA, for a period not to exceed 48 months, thereby reducing the overall anticipated benefits arising from the Amended PPA. The Stipulation was entered into among Board Staff, JCP&L and Hercules to resolve certain outstanding issues concerning the Amended PPA. The Board notes

that the Advocate submitted a letter not opposing the Amended PPA, as amended by the First Amendment. While the First Amendment will result in JCP&L's customers temporarily receiving a slightly less benefit than originally negotiated under the Amended PPA, the total benefits accruing to the customers through the term of the Amended PPA, as amended by the First Amendment, will continue to provide significant customer benefits relative to the Existing PPA.

The Board FINDS that the terms and conditions of the Stipulation provide a fair and balanced resolution of all issues raised during this proceeding. The Board also FINDS the First Amendment, attached to the Stipulation as Exhibit A, to be a fair and reasonable resolution of the provisions set forth in the Termination Agreement, attached to the Stipulation as Exhibit B. The Board notes that the Amended PPA provided for a guaranteed minimum discount in excess of \$50 million through its term via a reduction from the Amended PPA's base pricing structured to match the projected pricing under the Existing PPA. The Board further notes that the First Amendment reduces the guaranteed minimum discount to an amount less than the minimum discount originally negotiated. However, the Amended PPA, as amended by the First Amendment, also provides for additional economic benefits to customers that may be forthcoming through its term, based upon future natural gas prices that may achieve, and possibly exceed, the minimum discount level initially established under the Amended PPA. Accordingly, the Board HEREBY APPROVES the Stipulation as if it were set forth in its entirety in this Order. The Board also HEREBY APPROVES the First Amendment.

An immediate and noteworthy benefit of the instant transaction will be the receipt by JCP&L of the up-front Prepayment Credit payment in the amount of approximately \$26.5 million, which within two days of the effective date of the Amended PPA, will be credited by JCP&L to the MTC Deferred Balance. The front-end loading of these savings through the Prepayment Credit payment will help to mitigate the potential impacts on customers of the existing MTC Deferred Balance. However, as noted above, during the term of the Amended PPA, actual natural gas prices may vary either above or below the projections used to establish the fixed rates. Thus, the actual savings associated with the Amended PPA over the term of the agreement cannot be quantified at this time. Overall, the long-term forecast of natural gas prices used by JCP&L and NJEA in establishing the fixed energy prices in the Amended PPA appears to provide an acceptable level of benefits to customers relative to the potential risks associated with such projections.

The Board further FINDS that the Amended PPA contains provisions ensuring that JCP&L will receive guaranteed amounts of energy during on-peak periods, when the energy has the most value. Furthermore, the Amended PPA requires Seller to make JCP&L whole for any failure to meet these requirements.

The Board also FINDS that modification of the method in calculating the Variable Energy Rate, as set forth in the Variable Energy Settlement is an appropriate replacement for the previous methodology set forth in the Existing PPA. Establishing the Variable Energy Rate as a current monthly index approach will link fuel costs to contract costs, rather than the existing methodology of indexing the Variable Energy Rate to gas prices on a lagged annual basis. The Variable Energy Settlement should allow for a more efficient hedging strategy by NJEA, thus reducing hedging costs and contributing to the creation of a pool of savings from which restructuring savings are derived. The Board HEREBY APPROVES the Variable Energy Settlement.

Having reviewed this matter, the Board HEREBY FINDS that the negotiation and execution of the Amended PPA appears to comply with the directives and conditions set forth in the Final Order, which requires JCP&L to take steps to mitigate NUG stranded costs and to make reasonable efforts to renegotiate its above-market NUG contracts. While the instant agreement will not eliminate above-market NUG costs associated with the Existing PPA, based upon current market price projections, it appears that the rates, terms and conditions of the Amended PPA will provide immediate and substantial benefits to customers relative to the Existing PPA. The Amended PPA should also provide a greater reliability of energy delivery to JCP&L as a result of Seller's obligation to provide energy from its portfolio of generation resources rather than from a specific facility.

JCP&L has requested that the Board permit all amounts paid by JCP&L under the Amended PPA , as amended by the First Amendment, to be recovered on a full and timely basis, and that any above-market costs be recovered through the MTC. The Board HEREBY FINDS that JCP&L shall be able to fully and timely recover from its electric customers all incurred costs and charges associated with the Amended PPA, as amended by the First Amendment, through the established rate recovery mechanisms, including recovery of above-market payments through the MTC. The Board further DIRECTS that all savings resulting from the Amended PPA, as amended by the First Amendment, shall be passed through to the Company's customers on a full and timely basis, again through the established mechanisms, in particular through the application of the up front approximate \$26.5 million Prepayment Credit payment to reduce the MTC Deferred Balance. As noted above, the actual savings associated with the Amended PPA relative to the Existing PPA may be higher or lower, depending on whether the natural gas price projections used to establish the fixed rates in the Amended PPA are higher or lower than actual natural gas prices over the term of the agreement. Based upon the foregoing, the Board HEREBY APPROVES the Amended PPA, as amended by the First Amendment, consistent with, and pursuant to, the provisions of N.J.S.A. 48:3-61(l). In so doing, the Board emphasizes that, while the projected savings associated with this Amended PPA appear to be significant, the Board notes that JCP&L still projects substantial deferred amounts under its existing NUG contracts. Therefore, the Board continues to DIRECT JCP&L to take all reasonable measures to mitigate the stranded costs associated with its NUG purchase power agreements, as set forth in the Final Order.

JCP&L has sought recovery of certain transaction expenses related to the restructuring of the Existing PPA and the entering into of the Amended PPA. JCP&L asserted that the transaction expenses are comprised of financial advisor fees, legal fees and associated expenses, which the Company proposed to net against the amount of total restructuring savings that will be used to reduce the MTC deferred balance. The Board FINDS that it is neither necessary nor appropriate to consider the recovery of transaction expenses at this time. The Board therefore DEFERS consideration of the Company's request for recovery until such time as the Company provides information supporting said transaction expenses in its annual post-transition MTC deferred balance submission, as directed by the Board in its Final Order.

At its October 22, 2003 agenda meeting at which the within matter was considered, the Board approved the Amended Gas Supply Agreement between PSE&G and NJEA in Docket No. GM03080643. The Board therefore conditions its approval of the Amended PPA so that the Amended PPA approved herein and the Amended Gas Supply Agreement approved in Docket No. GM03080643 have the same effective dates. The effective date shall be the earliest date on which both the Amended PPA and the Amended Gas Supply Agreement can mutually become legally binding on all parties to the respective agreements, but not later than December 31, 2003. The Board's Order approving the Amended Gas Supply Agreement contains a reciprocal condition concerning the effective date of the Amended PPA. The Board

HEREBY DIRECTS JCP&L to notify the Board and all parties on the attached service list at least ten (10) days prior to the effective date of the Amended PPA.

With regard to the requests of JCP&L and NJEA for confidential treatment of certain information contained in the petition and the Amended PPA as described above, and Hercules' request for confidential treatment of certain information contained in the Utility Agreement as described above, the Board HEREBY FINDS that these issues should be decided by the Board's Custodian of Records pursuant to the Board's regulations, if and when a request is made for release of such information under the Open Public Records Act pursuant to N.J.A.C. 14:1-12.1 et seq.

The Board HEREBY DIRECTS JCP&L to submit evidence of the application of the Prepayment Credit payment to the MTC Deferred Balance, within ten (10) days of such payment.

DATED: NOVEMBER 5, 2003

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

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PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

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ATTEST:

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